STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the New Requirements	)	
Of 47 CFR § 51 Related to FCC Triennial Review	)	
Order Interconnection Provisions and Policies	)	R-03-7
	)	

REPLY TESTIMONY OF A. DANIEL KELLEY ON BEHALF OF GENERAL COMMUNICATION, INC.

1. My name is A. Daniel Kelley. I have been asked by GCI to comment on economic issues related to the implementation of the requirements of the Federal Communications Commission ("FCC") Triennial Review Order ("TRO"). Specifically, I have been asked to comment on market definition issues and to respond to the January 12, 2004 Affidavit of Howard Shelanski in support of the Comments of ACS.

I. QUALIFICATIONS

2. I am an economist in private practice. My professional experience began in 1972 at the Antitrust Division of the U.S. Department of Justice where I analyzed mergers, acquisitions and business practices in a number of industries, including telecommunications. While at the Department of Justice, I was a member of the *U.S. v. AT&T* economics staff. In 1979, I moved to the Federal Communications Commission ("FCC") where I held several positions, including Special Assistant to the Chairman, Senior Economist in the Policy and Rules Division of the Common Carrier Bureau and Senior Economist in the Office of Plans and Policy. After leaving the FCC, I was a Project Manager and Senior Economist at ICF,

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Incorporated, a public policy consulting firm. From September 1984 through July of 1990, MCI Communications Corporation employed me as its Director of Regulatory Policy. Until July of 2003 I was Senior Vice President of HAI Consulting, Inc. (formerly Hatfield Associates, Inc.).

3. I conduct economic and policy studies on a wide variety of telecommunications issues, including local competition, dominant firm regulation, and the cost of local service. I have advised foreign carriers and government officials on telecommunications policy matters and have taught seminars in regulatory economics in a number of countries.

4. I have testified on telecommunications issues before the Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Maryland, Massachusetts, Michigan, Ohio, Oregon, Pennsylvania, Utah and Washington Commissions, as well as the FCC and the Federal-State Joint Board investigating universal service reform.

5. I have testified on geographic market definition and impairment issues before the Ohio and Michigan Commissions. I provided an Affidavit related to costing models and impairment issues to the Alaska Commission on July 27, 2001 in Docket U-96-89.

6. I received a Bachelor of Arts degree in Economics from the University of Colorado in 1969, a Master of Arts degree in Economics from the University of Oregon in 1971, and a Ph.D. in Economics from the University of Oregon in 1976. My resume is attached as Exhibit ADK-1.

II. ORGANIZATION AND SUMMARY

7. Dr. Shelanski's view is that, although the triggers have not been satisfied, GCI's success in capturing customers in Anchorage, Fairbanks and Juneau demonstrates a lack of impairment. I will discuss Dr. Shelanski's position in detail below. I believe he has defined

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the geographic market improperly. He also measures the extent of competition within those markets incorrectly, and ignores the barriers to entry associated with the deployment of facilities to areas GCI currently is unable to serve with its own switches. The result is that Dr. Shelanski would have the Commission eliminate unbundled switching and thereby reduce GCI's ability to the give a substantial number of consumers the competitive facilities-based alternatives they so obviously demand. Dr. Shelanski also ignores the impact on other existing and potential competitors of removing UNE-P from the market.

8. I begin with a brief discussion of the consumer benefits associated with UNE-P. Next I describe the framework the FCC established in the TRO for evaluating impairment. I then respond to Dr. Shelanski's market definition discussion and explain why the local exchange areas he proposes as markets are not sufficiently granular. Finally, I address a variety of additional issues raised by Dr. Shelanski.

III. THE BENEFITS OF UNBUNDLED SWITCHING

9. Unbundled switching is a necessary component of UNE-P, a combination of individual network elements, including transport, switching, and a local loop, that enables many competitive local exchange carriers ("CLECs") to provide mass market customers with local service despite the operational and economic barriers that make facilities competition infeasible.

10. UNE-P provides mass market consumers with a choice they would not otherwise have. Customer choice is a good thing in and of itself. If UNE-P providers can supply superior customer service, then consumers are better off. Moreover, UNE-P providers add value by identifying specialized customer needs and designing service packages to meet them. UNE-P is also an important stepping stone to facilities competition, allowing CLECs

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to enter markets and acquire scale before building network facilities. Finally, compared to resale where rates are tied to the ILEC retail rate, UNE-P also allows a greater scope for price competition.

11. While UNE-based local exchange competition provides important consumer benefits in its own right, the ancillary benefits in markets for other services that are related to the local exchange, for example, downstream services such as Internet access, long distance and vertical services, are potentially more significant. Unbundling will ensure that competition for these down stream unregulated services remains robust. Given the significant network investment required for full facilities-based mass market competition, it will take years to develop, just as it took many years for the incumbents to build their networks in a monopoly environment. This means that in at least some geographic markets, consumers will remain dependent on unbundling for competitive access to downstream services that rely on local telephone connections. Thus, providing customers with a choice of retail suppliers of local telephone service through UNE-P will help preserve competition for down stream services.

12. Given these substantial consumer benefits, removing unbundled switching, and with it, the UNE-P option, from the mass market should only be undertaken when it can be demonstrated that consumers have, or will have in the very short run, other competitive options available to them.

IV. IMPAIRMENT AND THE FCC ANALYSIS

13. Impairment is the term the FCC uses to describe operational or economic barriers to entry or expansion by switched-based competitive providers of local telephone service.

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The FCC has determined that when these barriers are present, unbundled switching must be made available to CLECs in order to enable mass market competition.

14. The FCC made a national finding "that requesting carriers are impaired without access to unbundled local circuit switching when serving mass market customers."[1] In making that impairment finding, the FCC expressly found that "[i]nherent difficulties arise from the incumbent LEC hot cut process for transferring DS0 loops, typically used to serve mass market customers, to competing carriers' switches."[2] There are, however, additional sources of local switching impairment. The FCC found that "requesting carriers may be impaired without access to unbundled incumbent LEC local circuit switching because of operational and economic factors other than those associated with hot cuts."[3]

15. Although the FCC made a national finding that CLECs are impaired without access to UNE switching to serve mass market customers, the FCC recognized the possibility that in some markets the national impairments relied upon by the FCC may be less acute. Accordingly, the FCC requested that the State Commissions conduct "a more granular market-by-market analysis of impairment on a going forward basis,"[4] which is the focus of this proceeding.

16. As I mentioned above, the FCC considered the theoretical possibility that in rare cases there may be no impairment even in the face of the hot cut problem or other potential economic and operational factors that it has identified. As a tool to examine that possibility, the FCC established a "trigger analysis" as a means of identifying instances where the

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[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, CC Docket Nos. 01-338, 96-98 & 98-147 (rel. Aug. 21, 2003) at ¶ 419 ("*Triennial Review Order*" or "*TRO*").
[2] *Id.* at ¶ 422.
[3] *Id.* at ¶ 476.
[4] *Id.* at ¶ 427.

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nationwide finding of impairment may be inappropriate.[5] The basis of the trigger analysis is that the presence of competitors in a particular market may demonstrate the absence of the entry barriers that cause impairment elsewhere.[6]

17. A finding of no impairment can be triggered in three circumstances. First, if there are three or more CLECs (unaffiliated with the ILEC or with each other) actively providing (and likely to continue to do so) a geographic market with the use of their own switches.[7] Second, if there are two wholesale providers,[8] and third, "...if the market in question is suitable for '*multiple*, competitive supply'."[9] This third trigger is the potential deployment test. Thus, the FCC has asked the Alaska Commission to identify geographic and product markets and then evaluate competitive switching alternatives available to customers in those markets. For each geographic market there must be an empirical analysis into the extent to which competitive switching capacity within that market is available to assist CLECs in providing service to mass market consumers.

V. GEOGRAPHIC MARKET DEFINITION

18. The Alaska Commission must establish the geographic market boundaries for its impairment analysis. The FCC left to this Commission's informed discretion the determination of geographic market boundaries. However, the key FCC requirement is that the impairment analysis must be "granular." It follows that the geographic market analysis should be granular. In particular:

> State commissions must first define the markets in which they will evaluate impairment by determining the relevant geographic area

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[5] *Id.* at ¶¶ 498-505.
[6] *Id.* at ¶ 498.
[7] *Id.* at ¶ 501.
[8] *Id.* at ¶ 504.
[9] *Id.* at ¶ 506 (emphasis supplied).

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> to include in each market. State commissions have discretion to determine the contours of each market, but they may not define the market as encompassing the entire state. Rather, state commissions must define each market on a granular level, and in doing so they must take into consideration the locations of customers actually being served (if any) by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets economically and efficiently using currently available technologies.[10]

19. In the same paragraph, the FCC pointed out that:

> While a more granular analysis is generally preferable, states should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market.

Dr. Shelanski uses this FCC language to justify his selection of the Anchorage, Juneau and Fairbanks local service areas as geographic markets.[11] However, I do not believe this FCC statement justifies such a broad (and decidedly non-granular) market definition.

20. The FCC noted elsewhere that due to economies of scale a switch located in one state could be used to provide switching in another state. However, the FCC determined that markets could be no larger than a state. Thus there is a fundamental inconsistency between Dr. Shelanski's interpretation of the quoted passages and other portions of the FCC Order. Simply because a switch can possibly serve, or actually serves, an area, does not mean that the geographic market for the purposes of the impairment analysis is the same as the geographic market served or potentially served by that switch.

21. I believe the apparent inconsistency in the FCC Order favoring both granularity and taking into account the "available scale and scope economies from serving a wider

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[10] *Id.* at ¶ 495 (footnotes omitted, emphasis supplied).

[11] Affidavit of Howard Shelanski, R-03-7 (filed Jan. 12, 2004) ("Shelanski Affidavit") at ¶¶ 4, 21.

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market" goes to the issue of which CLEC mass market switches should be included on the supply side of the market. A switch in one location may have competitive significance in adjacent markets due to the presence of scale and/or scope economies in switching, and the FCC permits that such market-accessible switches be considered when applying the trigger analyses.

22. Moreover, the FCC impairment rules do not require that three switches be physically located in a market, but that, in the case of the competitive triggers analysis, three CLECs use switches to serve the market. Thus, the FCC implicitly recognized that switch economies can be realized in more than one market.

23. As I noted above, the FCC made it clear that the geographic market must be smaller than a full state. Beyond that, states are given considerable discretion. However, the FCC did imply that the geographic markets would be no larger than the service areas of existing ILEC wire centers. At several places in the *TRO*, the FCC notes that wire center data are essential. For example, paragraph 520 describes the potential deployment analysis in terms of wire center characteristics.

24. I believe that when there are significant differences in supply characteristics within wire centers, markets can be smaller than or different from a wire center and that the FCC Order gives state commissions the discretion to go to that more granular level.

25. The focus of the FCC in other proceedings has been on effective individual customer choice—what real world alternatives do affected customers have today? In applying this end-user based approach, the FCC has defined markets on a granular basis. For example, in the *TRO* itself, the FCC defined loop and transport markets on a specific customer location or specific point-to-point route basis respectively, making clear that the

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guidepost is actual existing alternatives available to customers.[12] What matters most from an economic perspective are the real world choices that consumers have available to them; *i.e.,* do consumers have switch-based CLEC choices for POTS services, and how many options are there?

26. The only way to analyze the impairment question and to apply the triggers in the manner requested by the FCC is to begin by analyzing competitive conditions in individual wire centers. The ILECs generally provide switching on a wire center by wire center basis. A CLEC using unbundled local loops to compete with an ILEC will establish a presence in individual wire centers to do so.[13] Competitive conditions, particularly barriers to entry, are likely to vary from wire center to wire center. In particular, entry into a geographic region will not occur all at once, as there are numerous entry conditions, will vary on a wire center-by-wire center basis. These conditions are discussed in detail in the Testimony of Emily Thatcher and Reply Testimony of Blaine D. Brown.

27. When deployment of remotes, IDLCs, or other concentrator devices (referred to collectively herein as "concentrator devices") is quantitatively significant, the state commission must consider this factor. The market definition exercise must take account of the more limited customer choice available when there are loops within a wire center that cannot be accessed by CLEC switches. Only in this way will the issue of consumer choice be appropriately analyzed. As explained in the Affidavit of Emily Thatcher[14] and illustrated by Exhibits ET-1 and ET-10 (Fairbanks), Revised ET-4 and ET-11 (Juneau), and ET-7 and

[12] *Triennial Review Order* at ¶¶ 208, 400.
[13] As explained in the Testimony and Reply Testimony of Emily Thatcher, it is appropriate here to define wire centers in accordance with the ACS central offices.
[14] Testimony of Emily Thatcher, R-03-7 (filed Jan. 12, 2004) ("Thatcher Testimony") at 3, 4-7.

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ET-12 (Anchorage),[15] the use of concentrator devices by ACS can prevent GCI from using its own switching capacity to serve customers whose loops are provisioned over such devices. Thus, within the ACS wire centers, there are non-multi-hostable concentrator device-served markets and separate non-concentrator device- and multi-hostable concentrator device-served markets.

28. The facts in Alaska differ substantially from those in other states where I have analyzed impairment. In those states, loops served by concentrator devices have been extremely limited. For example, in Michigan, less than one percent of the customer loops are provisioned through IDLCs. The quantitatively significant presence of concentrator devices in ACS territory gives rise to differences in supply characteristics within wire centers similar to the factors described above that vary among wire centers.

29. Defining local exchange areas as markets under these conditions, as proposed by Dr. Shelanski, is inappropriate. Local exchange areas will typically be too large to qualify as a geographic market because customers located within different wire centers in the same local exchange area may not have the same switching alternatives available. In other words, for economic or operational impairment reasons, a switch located in wire center A may not be capable of providing service to a customer in wire center B, even though both wire centers are in the same local exchange area. Thus customers located in wire center B would not face the same competitive choices as those found in wire center A. It follows that, in most cases, MSAs, LATAs or entire states would not qualify as geographic markets. As discussed above, when concentrator devices are present, even individual wire centers must be broken down into separate markets.

[15] *Id.* at Exhibits ET-1, Revised ET-4, ET-7, ET-10, ET-11 and ET-12.

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30. Dr. Shelanski seems to argue that because GCI has acquired a significant number of customers, it is somehow ok to reduce or eliminate GCI's ability to compete for the customers in areas where it is impaired by the inability to access loops with its own switches.[16] The ability to reach customers served through the ACS concentrator devices should not be restricted. The significant number of customers who have already chosen GCI demonstrates that Alaska consumers value choice.

31. I would also note that defining markets too broadly as proposed by Dr. Shelanski would produce negative incentive effects for both ACS and CLECs. If markets are defined to encompass both concentrator device-served and non-concentrator device-served areas, then ACS has the incentive to expand the scope of its concentrator-device deployment in order to reduce competition. On the other hand, if a CLEC knows that entering the market in one small area, a wire center for example, will lead to the trigger being pulled in all wire centers in a market defined too broadly, that will provide a disincentive for the CLEC to invest.

VI. ACTUAL DEPLOYMENT

32. There appears to be general agreement that neither the FCC retail nor wholesale mass market triggers are met in Alaska. Only ACS and GCI have deployed switches to serve mass market customers. Therefore, ACS and Dr. Shelanski must rely on a potential deployment case to prove lack of impairment.

VII. POTENTIAL DEPLOYMENT ANALYSIS

33. The potential deployment part of the FCC's analysis looks to whether a switch in one wire center is not serving customers in another wire center but could easily do so. Dr.

[16] Shelanski Affidavit at ¶ 19.

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Shelanski states that "I have seen no evidence to suggest that GCI cannot continue to add remote switching capability and transport that extends the reach of its existing switches to new customers in a given ACS LEC service area."[17] However, the Testimony of Emily Thatcher on behalf of GCI explains in great detail the operational difficulties, technical barriers, and costs associated with denying GCI access to the customer loop at the central office and requiring GCI to reach many customers at the sub-loop level through additional collocation and transport.[18]

34. Ms. Thatcher's analysis focuses on the operational barriers involved. It should also be noted that overcoming these operational barriers is expensive, involving fixed costs and often sunk costs at each step. These costs must be recovered from a relatively small number of customers. These are precisely the sorts of barriers discussed by the FCC in its discussion of potential deployment.[19] These costs are imposed on GCI by virtue of the ACS network design.

35. Even assuming that GCI had the ability to collocate to serve customers served by ACS concentrator devices at the sub-loop level, other potential entrants would likely remain impaired. GCI has already sunk substantial investments to serve Alaska customers. No other competitive carrier has made these investments, and the cost associated with making investments beyond the wire to serve customers makes it less likely they would do so. Eliminating unbundled switching would tend to discourage entry by other potential competitors.

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[17] *Id.* at ¶ 12.
[18] *See also* Response of GCI to RCA Order Requesting Data, R-03-07, (filed March 19, 2004) ("GCI Discovery Response") at 3.
[19] *See Triennial Review Order* at ¶ 520.

36. Finally, even if the RCA were to determine that there is "facial" satisfaction of one of the triggers, the fact that the ACS network design effectively prevents GCI from using its own switching in many instances would constitute an "exceptional source of impairment." According to the FCC, "in exceptional circumstances, states may identify specific markets that facially satisfy the self provisioning trigger, but in which some significant barrier to entry exists such that service to mass market customers is foreclosed even to carriers that self-provision switches."[20]

VIII. OTHER SPECIFIC COMMENTS ON DR. SHELANSKI'S ANALYSIS

37. GCI has obviously been successful in attracting retail customers. However, Dr. Shelanski (and ACS in its Comments) have overestimated the extent of this success by confusing wholesale and retail market share. When Dr. Shelanski reports GCI shares, he neglects to mention that a significant portion of these customers is currently being served with incumbent facilities.

38. Viewed in this light, it is apparent that although a substantial number of customers have exercised the freedom of retail choice given them by the 1996 Act, Dr. Shelanski's recommendation would deny many other consumers effective choice. The FCC specifically declined to base impairment on retail market shares, in part for this very reason: "In many instances, retail competition depends on the use of UNEs and would decrease or disappear without those UNEs; thus, a standard that takes away UNEs when a retail competition threshold has been met could be circular."[21]

39. Both Dr. Shelanski and ACS claim that GCI can rely on market forces to procure any switching that it may need from ACS. For example, according to ACS "...as a

[20] *Id.* at ¶ 503.
[21] *Id.* at ¶ 114.

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formidable competitor, GCI has a strong bargaining position with regard to ACS in negotiating switching rates in areas where GCI cannot access lines using its own switching facilities."[22] Of course, where GCI cannot use its own switching facilities, it has no bargaining power. As discussed above, GCI is impaired in the provision of facilities to the portions of the ACS network that cannot be accessed through a GCI switch. The "market" price that would be negotiated would actually be a monopoly market price.

40. Even the ACS witnesses seem to agree that access to facilities is needed when one carrier has all the facilities. For example, Mr. Pratt points out that "ACS is unable to provide facilities-based service" in subdivisions served only by GCI facilities.[23]

41. According to ACS, "among the evidence that the FCC says is 'most persuasive' in evaluating impairment is the availability of the network element outside of the ILEC's network."[24] ACS cannot use the fact of the availability of mass market switching outside of the ILEC's network" as evidence of non-impairment where concentrator devices prevent GCI from using its switches.

42. GCI's presence cannot be used as evidence of general non-impairment even in geographic markets where GCI switches are being used. GCI has been uniquely successful in the Alaska market. Other CLECs have not been able to duplicate this success. Due to institutional and historical factors, GCI has sunk substantial investments in the market. But this does not prove non-impairment. The FCC chose three triggers precisely because of such factors:

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[22] Comments of ACS of Anchorage, Inc, ACS of Fairbanks, Inc. and ACS of Alaska, Inc., R-03-7 (filed Jan. 12, 2004) ("ACS Comments") at 16.

[23] Affidavit of Stephen A. Pratt in Support of Comments of ACS LECs, R-03-7 (filed Jan. 12, 2004) ("Pratt Affidavit") at ¶ 17. *See also* Shelanski Affidavit at ¶ 35.

[24] ACS Comments at 8 (referring to *Triennial Review Order* at ¶ 7).

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> We set the number of competitive facilities at three for several reasons. First, we choose three self-provisioners as the appropriate threshold in order to be assured that the market can support "multiple, competitive" local exchange service providers using their own switches.1558 Second, setting the trigger at three competitive facilities takes into consideration the likelihood that self providers will not offer their service for wholesale, based on the evidence that local exchange service providers have generally not shown an interest in providing wholesale services, in contrast to the wholesale trigger, described below, which is met if there are two actual wholesalers. Finally, we believe that the existence of three self-provisioners of switching demonstrates adequately the technical and economic feasibility of an entrant serving the mass market with its own switch, and indicates that existing barriers to entry are not insurmountable.[25]

In other words, the presence of a single successful self-provider cannot be used to show general non-impairment. The decisions the RCA makes here will affect potential new entrants that do not have GCI's history in the market.

43. Dr. Shelanski makes much of the fact that GCI is a cable provider.[26] My understanding is that GCI is in the early stages of rolling out cable telephony service. In any event, the FCC went to great lengths in the *TRO* to indicate that the ability of cable providers to overcome impairment does not mean that barriers to entry for other providers have been overcome.[27] Thus, a finding of non-impairment based on GCI's status as a potential intermodal supplier would be inappropriate.

44. ACS also implies that since GCI is not purchasing UNE-P in some instances,[28] it will not be impaired if unbundled switching is withdrawn from the market. This is incorrect. GCI relies on resale in Anchorage in some instances, but only because the unbundled

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[25] *Triennial Review Order* at ¶ 501 (footnotes omitted).
[26] *See e.g.* Shelanski Affidavit at ¶ 6.
[27] *Triennial Review Order* at ¶ 446.
[28] *See* ACS Comments at 15.

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switching rate, and thus the rate for UNE-P, is relatively higher. I understand that this rate is the subject of an ongoing arbitration. If current input rates for UNE-P are reduced, UNE-P may become the better vehicle to bring competition to consumers in Anchorage where GCI cannot access the local loop via its own switching, even though it may serve these customers via resale today.

45. Dr. Shelanski reports that competitive entrants have not generally relied on unbundled switching in the ACS service areas.[29] This fact standing by itself proves little. The relative price of UNE-P and resale will affect the choices made by competitors. More significantly, the Act and the *TRO* require that both entry vehicles be made available as long as there is impairment. As demonstrated by the testimony, GCI is in fact using unbundled switching to bring competitive choice to Alaska consumers where it is appropriate.[30]

46. Finally, Dr. Shelanski argues that the *TRO* " . . . finding about hot-cut problems has no bearing where a CLEC has successfully deployed mass-market switching."[31] I disagree. The Testimonies and Replies of Gina Borland and Sue Keeling show that despite its decision to deploy switches, GCI has been impaired due to ACS batch cut performance. This problem must be addressed to allow GCI to obtain full functionality from its switch investment and to encourage other competitors to deploy their own switches. Among economic and operational barriers caused by the cut over process noted by the FCC is the "...potential for disruption of service to the customer..."[32]

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[29] Shelanski Affidavit at ¶ 16.
[30] *See id.* at ¶ 28 (stating that GCI serves 10 percent of its Juneau lines and 6 percent of its Fairbanks lines using UNE-P).
[31] *Id.* at ¶ 27.
[32] *Triennial Review Order* at ¶ 459.

IX. LOOP AND TRANSPORT

47. There is no question that GCI has built transport facilities and some high capacity loop facilities in Anchorage, Fairbanks, and Juneau, and has plans to use its cable facilities to serve customers directly. However, there is also no question that the FCC's triggers for these network elements have not been met. As I discussed above, historical and institutional factors appear to have given GCI the ability to acquire significant retail market share. However, the FCC rightly required a showing that more than one or two competitors must have (or are potentially able to) overcome impairment before a general finding of non-impairment can be reached. Moreover, as I noted earlier, GCI's presence cannot be used as evidence of general non-impairment.

X. CONCLUSION

48. GCI switching cannot be used to provide service to customers served by ACS concentrator devices. This fact alone is sufficient to demonstrate that there are separate geographic markets within ACS switching centers. GCI is impaired with respect to serving customers in the markets defined by the presence of concentrator devices. However, the FCC impairment analysis does not focus on the ability or inability of a single competitor to overcome impairment. The feasibility of multiple supply must be demonstrated through a self-deployment analysis, a wholesale trigger analysis, or a potential deployment analysis. None of the triggers are met for any UNEs in any of the applicable markets at issue.

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Exhibit 1
Kelley Reply Testimony

Exhibit ADK-1

A. Daniel Kelley, Ph.D.

PROFESSIONAL EXPERIENCE

Senior Vice President, HAI Consulting, Inc., Boulder Colorado

Conducting economic and applied policy analysis of domestic and international telecommunications issues. Recent assignments include investigation of broadband competition and interconnection, the impact of Internet growth on telephone companies, antitrust analysis of local telephone company mergers, and costing and interconnection studies in several countries. Other assignments have included analysis of competitive conditions in wireless markets, spectrum license economics, the prospects for local telephone competition, and the economics of cable television regulation. Taught executive level courses in telecommunications policy through Pace University.

Director of Regulatory Policy, MCI Communications Corp., 1984-1990

Responsible for developing and implementing MCI's public policy positions on issues such as dominant carrier regulation, Open Network Architecture, accounting separations and Bell Operating Company line of business restrictions. Also managed an interdisciplinary group of economists, engineers and lawyers engaged in analyzing AT&T and local telephone company pricing.

Senior Economist and Project Manager, ICF Incorporated, 1982-1984

Telecommunications and antitrust projects included forecasting long distance telephone rates, analysis of the competitive effects of AT&T's long distance rate structures, a study of optimal firm size for cellular radio markets, analysis of the FCC's television programming rules, and competitive analysis of mergers and acquisitions in a variety of industries.

Senior Economist, Federal Communications Commission, 1979-1982

Served as Special Assistant to the Chairman during 1980-1981. Advised the Chairman on proposed regulatory changes in the broadcasting, cable television and telephone industries; analyzed legislation and drafted congressional testimony. Coordinated Bureau and Office efforts on major common carrier matters such as the Second Computer Inquiry and the Competitive Carrier Rulemaking. Also held Senior Economist positions in the Office of Plans and Policy and the Common Carrier Bureau.

Economist, U.S. Department of Justice, 1972-1979

Analyzed proposals for restructuring the Bell System as a member of the economic staff of U.S. v. AT&T; investigated the competitive effects of mergers and business practices in a wide variety of industries including newspaper publishing, steel, petrochemicals, television broadcasting and brewing.

Exhibit ADK-1

INTERNATIONAL EXPERIENCE

Retained to provide expert testimony on Telecom New Zealand service costs and profitability in Clear Communications v. Telecom New Zealand (on behalf of Gilbert and Tobin).

Co-author of Todd Report on Telecommunications Reform in New Zealand. Worked with a team of analysts to identify proper costing methodologies and develop TSLRIC cost studies to assess the cost of meeting universal service obligations. Provided briefings on results for the Commerce Commission, the Commerce Department, the Treasury Department, Members of Parliament and the media. Prepared responses to critiques of the Report.

Analysis of telecommunications legislation on behalf of Telecom Fiji Ltd, including briefings for top management and preparation of written and oral submissions to government officials. (Working with Hesketh Henry).

Prepared interconnection cost model for the regulator in Mexico on behalf of Alestra.

Advice to Optus on competition, regulation and interconnection issues in Australia. Included reports and affidavits for the ACCC on cost modeling, non-dominant carrier regulation, and loop unbundling. Also provided expert economic advice for Optus in a wholesale rate arbitration with Telstra (on behalf of Gilbert and Tobin).

Advice on interconnection negotiations with Telmex on behalf of Banamex.

Analysis of long distance competition in Canada for Rogers Communications.

Advice to the government of Chile on competition and privatization. Provided economic support for a competition analysis undertaken by Debavois and Plimpton.

Advice to the Government of Hungary on competition and privatization. Served on a team of analysts on a World Bank funded study.

TEACHING EXPERIENCE

Developed and taught graduate level courses in telecommunications policy for executives as an adjunct professor at Pace University (1991-2000).

Taught State Department sponsored seminars and University level courses in telecommunications policy and regulation in the Czech Republic, Hungary, Poland, the Slovak Republic and Slovenia on behalf of the U.S. State Department and the Business Higher Education Forum (1992-1995).

EDUCATION

1976	Ph.D. in Economics	University of Oregon
1971	M.A. in Economics	University of Oregon
1969	B.A. in Economics	University of Colorado

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PAPERS AND COMPLETED RESEARCH

"Telephone Company Antitrust and Regulation: Lessons for the Microsoft Remedy" Silicon Flatirons Telecommunications Program: After Microsoft (September 4, 2001).

"New Zealand Telecommunications: The State of Competition" (1998), with Todd Telecommunications Consortium.

"Cable and Wireless Alternatives to Residential Local Exchange Service," Berkeley Conference on Convergence and Digital Technology (1997), with Alan J. Boyer and David M. Nugent.

"A General Approach to Local Exchange Carrier Pricing and Interconnection Issues," Telecommunications Policy Research Conference, Solomons, Md., (1992).

"Gigabit Networks: Is Access a Problem?" IEEE Gigabit Networking Workshop (1992).

"Advances in Network Technology" in Barry Cole, ed., After the Break-Up: Assessing the New Post-AT&T Divestiture Era (1991).

"Alternatives to Rate of Return Regulation: Deregulation or Reform?" in Alternatives to Rate Base Regulation in the Telecommunications Industry, NARUC (1988).

"AT&T Optional Calling Plans: Promotional or Predatory" in Harry M. Trebing, ed., Impact of Deregulation and Market Forces on Public Utilities: The Future Role of Regulation (1985).

"The Economics of Copyright Controversies in Communications" in Vincent Mosco, ed., Policy Research in Telecommunications (1984).

"Deregulation After Divestiture: The Effect of the AT&T Settlement on Competition," FCC, OPP Working Paper No. 8 (1982).

"The Transition to Structural Telecommunications Regulation," in Harry M. Trebing, ed., New Challenges for the 1980's (1982), with Charles D. Ferris.

"Social Objectives and Competition in Common Carrier Communications: Incompatible or Inseparable?" in Harry M. Trebing ed., Communications and Energy in Transition (1981), with Nina W. Cornell and Peter R. Greenhalgh.

"An Empirical Survey of Price Fixing Conspiracies," Journal of Law and Economics (1974), with George A. Hay. Reprinted in Siegfried and Calvari, ed., Economic Analysis and Antitrust Law (1978) and the Journal of Reprints for Antitrust Law and Economics (1980).

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RECENT FEDERAL COMMUNICATIONS COMMISSION PROCEEDINGS

Declarations, Affidavits and Papers filed in following proceedings (since 1996):

Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 (local loop unbundling)

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (status of local competition)

Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (broadband and Internet competition)

In the Matter of Allocation and Service Rules for the Point-to-Point Use of the 71-76 GHz and 81-86 GHz Bands (spectrum licensing rules)

In the Matter of Access Charge Reform, CC Docket No. 96-262 (special access deregulation)

In the Matter of Application by Verizon New England Inc for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 00-176 (Bell Company entry into long distance – also filed Declarations in New York and Texas proceedings)

In re Applications of Sprint Corporation, Transferor, and MCI Worldcom, INC., Transferee, CC Docket No. 99-333 (merger analysis)

In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from GTE Corporation, Transferor, to Bell Atlantic Corporation Communications Inc., Transferee, CC Docket No. 98-184 (merger analysis)

In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee, CC Docket No. 98-141 (merger analysis)

EXPERT TESTIMONY BEFORE REGULATORY AGENCIES

Federal Communications Commission, Application of Cellular Communications of Cincinnati, July 25, 1983 (with Robert J. Reynolds): Optimum firm size in the cellular radio market. For Combined Communications, Inc.

Maryland Public Service Commission, Case No. 0450-Phase II, May 31, 1983: Access charge implementation issues. For MCI.

New York Public Service Commission, Case No. 28425, June 1983: Access charge implementation issues. For MCI.

Florida Public Service Commission, Docket No. 820537-TP, June 30, 1983, November 4, 1983, April 9, 1984, June 4, 1984, September 7, 1984, October 25, 1984 and August 15, 1985: Access charge implementation issues. For MCI.

EXPERT TESTIMONY BEFORE REGULATORY AGENCIES (CONT'D)

Pennsylvania Public Utility Commission, Docket No. R-832, August 5, 1983: Rate Case. For MCI.

New Jersey Board of Public Utilities, Docket No. 83-11, February 20, 1984: Access Charges. For MCI.

New York Public Service Commission, Case 88-C-102, March 2, 1990: Alternative Operator Service Issues. For MCI.

California Public Service Commission, A.90-07-015, July 10, 1990: AT&T Deregulation. For MCI.

New York Public Service Commission, Case 28425, October 8, 1990: IntraLATA Dial 1 Competition. For MCI.

Massachusetts Department of Public Utilities, DPU 90-133, October 17, 1990: AT&T Deregulation. For MCI.

Georgia Public Service Commission, 3905-U, November 16, 1990: Incentive Regulation. For Georgia Cable Television Association.

California Public Service Commission, I-87-11-033, September 23, 1991: IntraLATA Competition. For Bay Area Teleport.

Georgia Public Service Commission, Docket No. 3987-U, January 31, 1992: Cross-Subsidy. For Georgia Cable Television Association.

Colorado Public Utilities Commission, Docket No. 92R-050T, August 24, 1992: Collocation. For Denver Teleport.

Connecticut Department of Public Utility Control, Docket No. 9106-10-06, September 25, 1992: Infrastructure. For MCI.

Maryland Public Service Commission, Case No. 8584, Phase II, July 21, 1995: Local Competition. For Maryland Cable Television Association.

Connecticut Department of Public Utility Control, Docket No. 95-06-17, September 8, 1995: Local Competition. For MCI.

Federal-State Joint Board on Universal Service, CC Docket No. 96-45, June 5, 1996: Cost Modeling. For AT&T.

Colorado Public Utilities Commission, Docket No. 96A-287T, September 6, 1996: Arbitration. For MCI.

Hawaii Public Utilities Commission, October 17, 1996: Arbitration. For AT&T.

EXPERT TESTIMONY BEFORE REGULATORY AGENCIES (CONT'D)

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Oregon Public Service Commission, Dockets ARB 3 & 6, September 6, 1996: Arbitration. For MCI.

Michigan Public Service Commission, October 24, 1996: Arbitration. For MCI.

New York Public Service Commission, Case No. 28425, May 9, 1997: Access Charges. For MCI.

Colorado Public Utilities Commission, Docket No. 97F-175T, July 18, 1997: Access Charges. For MCI.

Utah Public Service Commission, Docket No. 97-049-08, October 2, 1997: Access Charges. For AT&T.

Connecticut Department of Public Utility Control, Docket No. 96-04-07, February 10, 1998: Access Charges. For MCI.

Massachusetts Department of Public Utility Control, Docket No. 98-15, August 14, 1998: Wholesale Discount. For CTC.

Connecticut Department of Public Utility Control, Docket No. 95-06-17RE02, August 3, 1999: Wholesale Discount. For CTC.

Washington Utilities and Transportation Commission, Docket No. UT-991991, March 24, 2000: WCOM-Sprint Merger. For WorldCom.

California Public Utilities commission, Application No. 9-12-012, April 14, 2000: WCOM-Sprint Merger. For WorldCom.

Arizona Corporation Commission, Docket No. T-00000A-00-0194, September 27, 2001: UNE pricing. For AT&T.

Ohio Public Utilities Commission, Case No. 03-2040-TP-CO, December 1, 2003; Market Definition. For Talk America and Sage Telecom.

Michigan Public Service Commission, Case No. U-13796, December 9, 2003; Impairment. For Talk America and CAN Communications Services.